



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

August 17, 2008

The Honorable John Paul Woodley, Jr.
Assistant Secretary of the Army (Civil Works)
Department of the Army
108 Army Pentagon
Washington, D.C. 20310

Dear Secretary Woodley:

I want to begin by emphasizing my appreciation for your personal efforts to coordinate with me and the U.S. Environmental Protection Agency (EPA) as we work to clarify the scope of Clean Water Act (CWA) jurisdiction following the U.S. Supreme Court decision in *Rapanos v. United States*. I know we share the goal of implementing an effective, efficient, and equitable CWA Section 404 regulatory program for protecting the Nation's vital waterways. Thank you for your leadership as we coordinate to ensure that jurisdictional determinations, administrative enforcement actions, and other relevant agency actions being conducted under CWA Section 404 are both consistent with the *Rapanos* decision and are environmentally protective.

In this regard, the agencies have recently coordinated in assessing the jurisdictional status of two rivers in the Corps Los Angeles District. The Los Angeles River in California and the Santa Cruz River in Arizona have been the focus of legal and policy evaluations in determining their status as traditional navigable waters (TNW) under our regulations. These two cases raise important legal and policy issues in light of the extensive case law regarding the definition of traditional navigable waters and because of special environmental and climatic factors found in the arid Southwest.

Recognizing the issues raised by these two cases and EPA's role under the CWA in establishing the geographic scope of jurisdiction for all programs under this statute, I have decided to invoke the coordination procedures established in the 1989 Army/EPA *Memorandum of Agreement Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions under Section 404(f) of the CWA* (MOA). With this letter, I am designating the Los Angeles and Santa Cruz Rivers as Special Cases under the MOA and, therefore, EPA Headquarters will make the final determination of their jurisdictional status under the CWA. I understand that the Los Angeles District has already made a decision regarding the TNW status of certain segments of the Los Angeles River and EPA will, of course,

respect the Corps decision as a final determination regarding those portions. The Office of Water will coordinate with EPA Region IX, the Office of General Counsel, and your office in assessing the relevant legal and policy issues and ecological characteristics in determining the jurisdictional status of these rivers under 33 C.F.R. § 328.3 and 40 C.F.R. § 230.3 of our regulations. We will work with you to complete this review in a timely manner.

Thank you again for your effective leadership in clarifying the scope of CWA jurisdiction in light of *Rapanos*. I look forward to working closely with your office as we coordinate to complete the CWA determinations that are the subject of the two Special Cases designated by this letter. Please feel free to call me or have your staff contact my Chief of Staff, Greg Peck, with any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "B. H. Grumbles", with a stylized flourish at the end.

Benjamin H. Grumbles
Assistant Administrator

Los Angeles (CA) and Santa Cruz (AZ) Rivers Special Case – August 18, 2008

What action is being taken by EPA?

EPA Assistant Administrator for Water Benjamin H. Grumbles, on August 17, 2008, designated the Los Angeles River, California and Santa Cruz River, Arizona as “special cases” under the terms of a 1989 Army/EPA *Memorandum of Agreement Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions under Section 404(f) of the CWA* (MOA). These designations apply to the Los Angeles River from its origin to the Pacific Ocean, and to the Santa Cruz River from the Mexican Border to the Gila River. These designations mean that EPA will make final decisions concerning the geographic jurisdictional status of these rivers under the Clean Water Act (CWA).

EPA’s action was taken in an August 17 letter from Benjamin Grumbles to Assistant Secretary of the Army John Paul Woodley, Jr.

Why did EPA take this action?

EPA and the Army Corps of Engineers (Corps) are working together closely to implement an effective, efficient and equitable CWA Section 404 regulatory program. For more than two years, EPA and the Corps have been cooperating to clarify the scope of CWA jurisdiction following the U.S. Supreme Court decision in *Rapanos v. United States*. The Los Angeles and Santa Cruz Rivers raise important national legal and policy issues in light of the extensive case law regarding the definition of navigable waters and because of the climatic and ecological factors found in the arid Southwest. EPA will be coordinating with the Corps of Engineers to evaluate these rivers to ensure national consistency with existing law and policy, including the Clean Water Act and the *Rapanos* decision.

How will EPA determine jurisdiction for the “special case” rivers?

The 1989 Army/EPA MOA does not specify a process or timeline for making special case decisions following designation of special cases. However, in addition to coordinating with the Corps, EPA will strive to solicit input from interested parties, such as state water resource agencies and the public, to assist its analysis and to complete its decisions in a timely manner.

Does this decision affect watersheds other than the Santa Cruz River and Los Angeles River?

No.

Is EPA's decision in response to criticism from Congress?

No. EPA continues to work very closely with the Corps on individual cases that raise important national policy issues. As EPA's letter recognizes, the Corps has shown effective leadership in coordinating with EPA as we address the legal and policy questions raised by the Supreme Court decision in *Rapanos*. The Santa Cruz and Los Angeles River CWA jurisdictional determinations involve novel issues regarding the definition of navigable waters, streams whose flow includes effluent discharges from treatment facilities, and streams located in arid regions of the country where flow characteristics are dominated by precipitation events.

EPA is responsible for determining the geographic scope of jurisdiction for all programs under the Clean Water Act, including the Sections 402 and 404 permit programs and the Section 311 oil spill program. Recognizing EPA's role under the CWA and the issues raised by these cases, Assistant Administrator Grumbles decided it was appropriate to designate the Los Angeles and Santa Cruz Rivers as special cases and to take the lead, in coordination with the Corps of Engineers, to prepare final CWA jurisdictional determinations for both rivers.

Desk Statement on Clean Water Act Special Case Designation: Los Angeles River, California and Santa Cruz River, Arizona

On August 17, 2008, EPA Assistant Administrator for Water Benjamin H. Grumbles designated the Los Angeles River, Calif. and Santa Cruz River, Ariz. as “special cases” under the terms of a 1989 Army/EPA *Memorandum of Agreement Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions under Section 404(f) of the Clean Water Act (CWA)* (MOA). These designations apply to the Los Angeles River from its origin to the Pacific Ocean, and to the Santa Cruz River from the Mexican Border to the Gila River. These designations mean that EPA will make final decisions concerning the geographic jurisdictional status of these rivers under the CWA.

“EPA is working closely with the Corps of Engineers to use our Clean Water Act regulatory tools to protect the nation's vital waterways,” said Benjamin H. Grumbles, EPA’s assistant administrator for water. “Our coordinated efforts on the Los Angeles River and Santa Cruz River will help ensure environmental protection and regulatory predictability consistent with recent Supreme Court decisions.”